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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| GALLAGHER & DAWSEY CO., L.P.A. P.O. BOX 785 COLUMBUS, OH 43216 | | | EXAMINER EARLY, MICHAEL JACOBY | |
| | | | ART UNIT 3749 | PAPER NUMBER |
| DATE MAILED: 10/03/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/825,037

Applicant(s)

GRILLOT, MARION

Examiner

Michael J. Early

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/15/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

All the content submitted with this application has been reviewed and it has been determined that neither domestic nor foreign priority has been claimed.

Information Disclosure Statement

The Information Disclosure Statement for this application meets all of the requirements set forth and has been approved.

Oath/Declaration

The Oath/Declaration for this application meets all of the requirements set forth and has been approved.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "220" has been used to designate both distal end and stop (see Figure 2).

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

- 500 (auxiliary supports; see page 10, lines 21 – 22; Figure 7);
- 212 (stop; see page 9, line 17; Figure 2).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

Art Unit: 3749

corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Art Unit: 3749

It is suggested that the applicant review the guidelines set forth above and make the appropriate corrections (i.e. section headings should appear in upper case, without underlining or bold type, as a section heading).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1 – 5 and 13 – 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias (U.S. 4,311,199) in view of Klarich et al. (U.S. 2003/0230298 A1).

Elias discloses of a campfire safety apparatus (10 – firewall) that comprises of a plurality of portable interlocking rigid safety panels (14 – modular rectangular panels); each having a lower rail, an upper rail, a plurality of interconnected intermediate rails, a first sidewall rail having a pin receiver (26 – straps), and a second sidewall rail having a pin receiver (26 – straps) (as seen in Figures 2 and 6). Also, Elias further discloses that the pin receivers on adjacent panels cooperate to receive a pin (16 – support rods), having a proximal end and a distal end, that releasably secures the adjacent panels together (as seen in Figures 2 and 6). Further disclosed is a distal end of at least one of

Art Unit: 3749

the pins extends through the cooperating pin receivers (26 – straps) and terminates into the ground to anchor the apparatus (as seen in Figure 2) with possible exception to:

- enclosing a campfire and the upper rail being above the campfire's flame height;
- the free area ratio of the rigid safety panel is at least fifty percent;
- the free area ratio of the rigid safety panel is at least eight-five percent.

Attention is directed to the secondary reference, Klarich et al., which teach of a portable campfire barrier system (100); which is comprised of: a containment wall (102), containment area (101), support members (106), upper and lower edges (124 and 126, respectively) and an overlap portion (132); that is used to prevent the spread of a campfire beyond an established perimeter (see page 2, paragraphs 0037 – 0039). In addition, it is further state that the barrier system is constructed in a-ready-to-use configuration and can be collapsed for facilitating storage and transport because of its ductile nature (see Abstract). Klarich et al. further disclose that the height (105A) of the containment wall (102) is of a sufficient height to prevent fire, including most sparks and embers, from escaping to the surrounding area. Also, it is disclosed that the containment wall (102) can be increased, at the discretion of the user, for additional safety to any appropriate height (see page 3, paragraph 0041).

In regard to claims 2 – 3 and 13, they are unpatentable over Elias in view of Klarich et al. as a result of design considerations.

Neither Elias nor Klarich et al. discuss the exact the free area ratio, i.e. ratio of unobstructed free area to total free area, of the their apparatus' respective panels. In the present application, as previously stated, the applicant points out that the free area ratio of the safety apparatus's panels are least fifty or eighty-five percent; however, has not disclosed any definitive evidence stating that having a free area ratio of these values solves any stated problems or is for any particular purpose. Moreover, it appears that the safety apparatus would perform equally well with a safety panel that is of any commonly used free area ratio.

Therefore, it would have been obvious to provide a safety panel that is comprised of a free area ratio of at least fifty or eighty-five percent, to ensure that the air emitted from the campfire was performed in an effective manner.

Accordingly, the use of a safety panel with at least a fifty or eighty-five percent free area ratio as disclosed above is deemed to be a design consideration, which fails to patentably distinguish over the prior art of Elias and Klarich Lee et al.

Claims 6 – 7, 15 – 16 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias in view of Klarich et al. and in further view of Metz (U.S. 806,160).

As previously state, Elias discloses of a firewall that can be modified by Klarich et al. with possible exception to:

- including an anchor on the distal end of at least one of the pins to facilitate easy ingress of the distal end into the ground, resist egress from the ground, and prevent rotation;
- including a screw on the distal end of at least one of the pins to facilitate easy ingress of the distal end into the ground and resist unintended egress from the ground;
- a plurality of portable interlocking rigid safety panels, each having a lower rail, an upper rail, a first sidewall rail having a pin receiver, and a second sidewall rail having a pin receiver, wherein the pin receivers on adjacent rigid safety panels cooperate to receive a pin, having a proximal end and a distal end, that releasably secures the adjacent panels together and terminates into the ground with an anchor to facilitate easy ingress of the distal end into the round, resist egress from the ground, and prevent rotation, and a plurality of interconnected intermediate rails providing structural integrity and increasing the panels effectiveness as a barrier, while maintaining a free area ratio of the rigid safety panel of at least

eighty-five percent, wherein the rigid safety panel encloses a campfire and the upper rail is above the campfire flame height.

Attention is directed to the secondary reference, Metz, which teaches of a fire-protector; which is comprised of: a plurality of posts (1), panels (2) and feet (3); that is used to prevent any injury that may occur when a user, or their clothing, comes in contact with a heated stove (see col. 1, lines 8 – 10). In addition, it is further state that the fire-protector will allow access to a stove for the purpose of: coaling, the removal of ashes and cleaning (see col. 1, lines 11 – 13). Metz further discloses that feet (3), which are apertured to receive screws or fastenings, are attached to the bottom of the stove's posts (1) for the purpose of securing the protector to the floor (see page 1, lines 69 – 72).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias in view of Klarich et al. by installing feet along the apparatus' posts, as taught by Metz, to ensure that the firewall would not be inadvertently moved, adjusted or removed from a surface.

In regard to claim 22, it is unpatentable over Elias in view of Klarich et al. and in further view of Metz as a result of design considerations.

Neither Elias, Klarich et al. nor Metz discuss the exact the free area ratio, i.e. ratio of unobstructed free area to total free area, of the their apparatus' respective panels. In the present application, as previously stated, the applicant points out that the free area ratio of the safety apparatus's panels are least fifty or eighty-five percent; however, has not disclosed any definitive evidence stating that having a free area ratio of these values solve any stated problem or is for any particular purpose. Moreover, it appears that the safety apparatus would perform equally well with a safety panel that is of any commonly used free area ratio.

Therefore, it would have been obvious to provide a safety panel that is comprised of a free area ratio of at least eighty-five percent, to ensure that the air emitted from the campfire was performed in an effective manner.

Accordingly, the use of a safety panel with at least an eighty-five percent free area ratio as disclosed above is deemed to be a design consideration, which fails to patentably distinguish over the prior art of Elias and Klarich Lee et al.

Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias in view of Klarich et al. and in further view of Sanders (U.S. 1,425,341).

As previously state, Elias discloses of a firewall that can be modified by Klarich et al. with possible exception to one of the portable interlocking rigid safety panels having an upper panel section and a lower panel section, the sections are rotably joined so that the upper panel section may rotate down about an intermediate hinge to permit greater access to the campfire fire ring and its contents, and having a retainer to secure the upper panel section in place when greater access is not required.

Attention is directed to the secondary reference, Sanders, which teaches of a fire screen; which is comprised of: a front wall (15), a top wall or cover (18), side walls (16), spring clips (21), an attaching base (22), a retaining member (25), arms (30) and a base plate (33); that precludes a user and their apparel from coming into contact with a fire's burning fuel or flame. In addition, it is further disclosed that the fire screen allows the area surrounding a fireplace to be rendered safe for children (see page 1, lines 8 – 16; Figures 1 and 5). Sanders further discloses that the screen's cover (18) can be opened and placed in a horizontal position, upon arms (30), so that a user can readily place fuel onto a fireplace's grate or iron (see page 1, lines 17 – 25; page 2, lines 32 – 44; Figures 1, 4 and 5). It is further stated that spring clips (21); which are comprised of: an attaching base (22), spring tongues (23) and upper ends (24); are provided to prevent the fire screen's cover (18) from being accidentally opened (see page 1, lines 95 – 105).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias in view of Klarich et al. by installing a panel along the firewall that can be opened and closed, via a locking mechanism, as taught by Estes, for the purpose of providing users an ergonomic method of accessing a fire as well as ensuring that any users or bystanders are not inadvertently harmed by the fire.

Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias in view of Klarich et al. and in further view of Kaufman (U.S. 1,499,665).

As previously state, Elias discloses of a firewall that can be modified by Klarich et al. with possible exception to including a rigid top panel having a perimeter rail and a plurality of interconnected intermediate rails, wherein the perimeter rail cooperates with the rigid safety panel upper rail to prevent unintentional contact with the campfire from above the upper rail.

Attention is directed to the secondary reference, Kaufman, which teaches of a collapsible rubbish burner that: is formed of a simple, economical and flexible construction – its wholly comprised of wire strands – and can be easily folded for shipping and storing purposes (see page 1, lines 8 – 16 and 29 – 32; Figure 1). In addition, it is further disclosed that due to its structure, the burner can also be used as a clothes hamper (see page 1, lines 46 – 47). Kaufman further discloses that the burner has a top section (7) that is hingedly attached to one of the burner's upper wires (2) through the use of metal clips (8), a metal strap (9) and a lock hook (90) (see page 2, lines 51 – 61; Figure 1).

The examiner would like to note that Kaufman's rubbish burner and Elias' firewall are structurally similar. Both apparatuses are made of a metallic material: the panels (14) of Elias's firewall are preferably fabricated from an aluminum sheet material (see col. 1, lines 45 – 48) and the strands (1) of Kaufman's burner are composed of metal (see page 1, lines 8 – 16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias in view of Klarich et al. by installing a top panel along the firewall that can be opened and closed, via a locking mechanism, as taught by Estes, for the purpose: of providing users an ergonomic method of accessing a fire as well as ensuring that any users or bystanders are not inadvertently harmed by the fire.

Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias in view of Klarich et al. and in further view of Hering (U.S. 5,915,371).

As previously state, Elias discloses of a firewall that can be modified by Klarich et al. with possible exception to including a campfire accessory tool having a plurality of connection devices that cooperate with the rails of the rigid safety panel to releasably fasten the tool to the rigid safety panel.

Attention is directed to the secondary reference, Hering, which teaches of a foraged fuel stove (20); which is comprised of: two joinable hollow semi-cylinders (22, 24), two grill wires (28, 30), two guiding pivot wires (32, 34) and a spoon (35); that is simple in construction, strong and sturdy, and easy to use (see col. 3, lines 34 – 38; col. 6, lines 1 – 6; Figures 1 – 3). In addition, other benefits of the stove include: being designed so that twigs, small sticks and other materials normally found near a camping site can be used as fuel as well as the ability to boil a quart of water at an outdoor temperature of 0°F in less than 5-minutes (see col. 1, lines 25 – 31). Hering further discloses that the stove is designed so that its grill wires (28, 30) can be used to hold a utensil of some sort, i.e. a spoon (35) (see col. 6, lines 5 – 6; Figures 1 – 2 and 15).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias in view of Klarich et al. by installing an accessory tool along the firewall, as taught by Hering, for the purpose of decreasing the likelihood that any cooking utensils could be lost while using the campfire as well as times when the firewall is stored away.

Claims 11 – 12 and 20 – 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias in view of Klarich et al. and in further view of Gaskins (U.S. 4,338,912).

As previously state, Elias discloses of a firewall that can be modified by Klarich et al. with possible exception to:

- including a plurality of auxiliary supports to secure the apparatus to the campfire fire ring thereby further adding stability to the apparatus;

Art Unit: 3749

- the auxiliary supports have a telescoping rod with a distal end and a proximal end, a fire ring pad attached to the distal end to rigidly secure the support to the fire ring, and a panel interface at the proximal end to rigidly secure the support to the rigid safety panel.

Attention is directed to the secondary reference, Gaskins, which teaches of an outdoor cooking grill (10); which is comprised of: vertical post members (12, 14), a horizontal support or carrier beam (18), support brackets (20, 24), fire grates (26, 28), a bail (40), support braces (62, 72) and movable anchor blocks (64, 74); that is reliable and rugged, and capable of cooking food products of varying thicknesses (see col. 1, lines 49 – 56; col. 4, lines 4 – 8; Figures 1 – 2). In addition, it is further disclosed that the grill's grates (26, 28) can be easily adjusted so that any sort of danger, accident or injury can be avoided (see col. 4, lines 1 – 4; Figure 2). Gaskins further discloses that the grill's grates (26, 28) are supported by support braces (62, 72), which are hingedly connected to the lower end of the grill's movable anchor blocks (64, 74), allow the position of the food portions (46), suspended on the grill's bail (40), to be adjusted with respect to the fire contained therein (see col. 3, lines 12 – 24; Figures 1 – 2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the existing firewall of Elias in view of Klarich et al. by installing support braces and movable anchor blocks along the sides of the apparatus, as taught by Gaskins, for the purpose of providing a safe means of adjusting the distance between the items of food being cooked and the fire.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Early whose telephone number is (571) 272-3681. The examiner can normally be reached on Monday - Friday, 7am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on (571) 272-4475. The fax phone

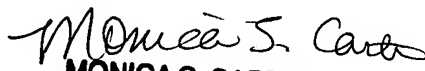
Art Unit: 3749

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJE
9/26/05

Michael J. Early
Patent Examiner
Art Unit 3749


MONICA S. CARTER
PRIMARY EXAMINER